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Testimony of Allan P. Hillman, Esq.  
In Opposition to:

**H.B. No. 5276 (RAISED) AN ACT CONCERNING CONNECTICUT BASED  
MICROBREWERIES**

General Law Committee, Public Hearing, March 2, 2010

Chairmen Colapietro and Shapiro and Members of the Committee:

I appreciate the privilege and opportunity afforded me by the Committee to speak in opposition to this measure. I have been retained as an expert on franchise laws by the Wine and Spirits Wholesalers of Connecticut.

**1. My Background**

I am Chair of the Connecticut Bar Association Committee on Franchise Law, which addresses issues relating to franchises, wholesale distributorships, and dealerships. I am also an officer on the CBA Antitrust Committee. I have served as an expert witness on franchise and related laws on a number of occasions, including this year concerning the Connecticut Business Opportunity Investment Act in an arbitration in Chicago.

In a previous life, I co-founded the Maryland Bar Association Franchise Committee, was Chair of the Maryland Bar Business Law Section, and was an Associate Editor of the American Bar Association Franchise Law Journal, a publication for the 4,000 attorneys from Connecticut and throughout the country who are franchise, distributorship, and dealership specialists. I have

practiced law, both business and litigation, for thirty-eight years. In the last several, I have had the privilege of practicing in Connecticut, both in Hartford and in the New Haven area.

I have written on and taught law to Judges, lawyers, and businesspersons, particularly in the area that concerns us today. My most recent publication is the chapter in the forthcoming ABA Dealer Termination Handbook, entitled "State Statutes Governing Termination." My resumé is attached.

I represent both suppliers and franchisors on the one hand, and franchisees, wholesalers and dealers on the other, so I hope my perspective benefits from that breadth of experience.

## **2. Executive Summary**

The proposal we discuss today, no matter how well-intentioned, flies in the face of forty years of legislation in this area. Enactment would constitute the first retreat of which I am aware by any state from providing basic good cause termination protection, instead allowing suppliers to terminate without good cause. It would be a retreat from the history of that protection provided by this Legislature to virtually all franchisees, and to distributors and dealers.

Moreover, alcohol wholesalers in Connecticut do not have special legal protections not afforded other resellers. In fact, in Connecticut and across the country, comparable businesspersons in this industry and other industries have as much or greater protection. To enact the present measure would not eliminate a favored status for Connecticut alcohol wholesalers; it would make them particularly disfavored in law.

## **3. Discussion**

In the 1950s and 1960s, many suppliers and entrepreneurs advertised franchise, wholesaler, and dealer opportunities by making extensive promises of success with little

investment, if aspiring businesspersons would send them checks for anywhere from \$5,000 to \$25,000 or more. In numerous instances, the “promises” turned out to be empty and the money paid disappeared, sometimes along with the entrepreneurs. Many people lost their life savings.

Beginning in the 1970s, the Federal Trade Commission (“FTC”), and various states, stepped in. The FTC began to require throughout the nation that those offering franchise opportunities furnish extensive disclosure documents, including over twenty categories of information about the supplier, its personnel, its financial status and experience, the nature of the business, the franchise agreement, the costs, and the other requirements. 16 C.F.R. Section 436.1 (1979, amended 2007). Since then, over a dozen states including New York, Illinois, California, Michigan, and Rhode Island, have enacted their own state “disclosure and registration” laws to protect their citizens, because there is no private right of action under the FTC Act – and the federal government has few resources to address the problems of individual or small groups of wholesalers or franchisees.

Connecticut enacted a statute that requires disclosures to purchasers of “business opportunities” and allows private suits, CGS Sections 36-b-60-80 (1979, amended 1996). But that law exempts all suppliers holding federal trademarks, in effect denying protection to anyone who deals with such suppliers, including wholesalers of alcohol.

The companion trend in protection of wholesalers and other resellers since the 1970s has been statutory protection for them against termination or non-renewal of their contracts, unless the supplier can establish good cause. There are scores of state laws that protect franchisees, wholesalers, and dealers from “no-cause” terminations and non-renewals – some in general, and others in industries ranging from gasoline service stations to motor vehicles to farm and

industrial equipment. Connecticut, for example, has a general law, the Connecticut Franchise Act, CGS Sections 42-133e – 42-133h, enacted in 1972 (and amended in 1975 to broaden its coverage). Nevertheless, the definition of “franchisee” in the Connecticut Franchise Act has had the effect of excluding multi-line resellers.

Starting in 1971, the Connecticut Liquor Control Act, in Section 30-17, required suppliers and manufacturers to show good cause for termination or diminishment of wholesaler territories, including requiring a Liquor Control Commission hearing. That Act was part of the trend in the law in Connecticut and across the nation.

Laws protecting alcohol wholesalers from termination without cause have been enacted in Arkansas, Georgia, Idaho, Kansas, Maine, Michigan, Missouri, Montana, Nevada, New Mexico, North Carolina, New Jersey, Ohio, Vermont, Virginia, Washington, and Wisconsin.<sup>1</sup> Never has one been repealed, nor has one been weakened as this bill would weaken Connecticut law.

As a practical matter, most parties today recognize that resellers’ reasonable security and an equitable contract are valuable to the supplier, not just the reseller. The contracts in the wine and spirits industry that do not provide for good cause termination are creatures of a different age, and a different approach to business, akin to the laissez-faire approach that the United States Supreme Court, regardless of the Justices’ political ideologies, discarded decades ago.

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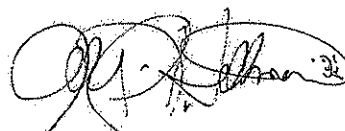
<sup>1</sup> AR Reg., Title 2, Subtitle C, Section 2.16, and AR Law, Sections 3-2-401-412; GA Reg., Sections 560-2-3-.24(5)-(7); ID Law, Title 23, Chap. 13, Section 23-1328A; KA Code, Chap. 41, Art. 4, Section 41-410; ME Code, Title 28-A, Chap. 57, Sections 1454-55; MI Law, Section 436.30 c (7)-(8); MO Law, Sections 407.410-413; MT Law Sections 16-3-415-421; NV Code, Title 32, Chap. 369, Section 369.386 and Chap. 598, Sections 598.330-351; NM Stat., Chap. 60, Sections 60-8A-7-11; NC Stat., Chap. 18B, Art. 12, Sections 18B-1204-05; NJ Alcohol Bev. Control Reg., Sections 13:2-18.1(a)-(b); Ohio Rev. Code, Sections 1333.84-85; VT Code, Title 7, Sections 701-10; VA Rev. Code, Chap. 2.3, Sections 4.118-47-48; WA Bus. Reg., Chap. 126, Sections 19-126.010 et seq. and WA Stat. 19-126; WI Fair Dealership Law, WI Stat. Sections 135-01-07, 66.

4. **Conclusion**

Uniformly across the country, as in Connecticut, the growing trend has been in favor of good cause protection for alcohol wholesalers, and other franchisees. Several state laws have been enacted in recent years. If Connecticut were to delete this basic protection, it would stand essentially alone in rejecting the trend. And instead of being in the forefront of protecting its citizen-businesspersons, it would encourage them to seek opportunities elsewhere. That is neither sound policy nor does it seem to be sound business, particularly in today's economic climate.

Thank you.

Respectfully Submitted,



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Practice includes Franchise and Distribution Law, Trade Regulation and Antitrust Law, Commercial Litigation and Arbitration, Intellectual Property Law (Trademarks, Copyrights, Trade Secrets and Non-Competition Covenants), Defamation, and Trade Association Law.

**EDUCATION**

Columbia University Law School, J.D.  
Columbia College  
B.A. with Honors

**BAR ADMISSIONS**

Connecticut  
Maryland  
United States Courts of Appeal for the Second, Third,  
Fourth and Ninth Circuits and Court of International Trade.  
Admitted pro hac vice in many U.S. District Courts.

**BAR ASSOCIATIONS/  
LEADERSHIP  
POSITIONS**

American Bar Association (Member, Section of Antitrust, Section of Intellectual Property, and Member, Forum on Franchising; Associate Editor, ABA Franchise Law Journal, 2002-08); Connecticut Bar Association (Chair, Franchise Committee, 2008-10; Treasurer, Antitrust Committee) Maryland Bar Association (Chair, Business Law Section Council, 2004-05; Co-Founder and Chair, Franchise and Distribution Law Committee, 1995-1997)

**COMMUNITY  
SERVICE /  
MEMBERSHIPS**

Society for Sight (volunteer visitor and reader for the blind, 2000 to date)  
President, American Civil Liberties Union of New Haven County (2008- )  
President, Congregation Mishkan Israel (Hamden, CT)  
Interfaith Legal Services (Legal Counsel, Pro Bono, 1999 to date)  
Member, ASPCA  
Member, Environmental Defense and Earthjustice

**REPRESENTATIVE  
PUBLICATIONS &  
TEACHING**

Author and Lecturer on Franchise, Antitrust, and Non-Competition Law to Maryland Judiciary (Business and Technology Court Educational Programs, April 2004 and April 2003)

Papers published by American Bar Association Antitrust Section, American Bar Association Forum on Franchising, ABA Franchise Law Journal, International Franchise Association, Connecticut Law Tribune, Franchise Times, U.S. Distribution Journal, Maryland Institute for the Continuing Professional Education of Lawyers, Maryland Judicial Conference, and Maryland Bar Journal, including, inter alia:

ALLAN P. HILLMAN

The Franchise Deskbook

(Author of Chapter) (ABA 2001, and 2d Ed. 2008 and 3d Edition, 2010 – forthcoming).

Dealer Termination Handbook (Second), ABA Antitrust Section

(forthcoming); author of section titled “State Statutes Governing Termination of ‘Franchises.’”

“Leegin Opens the Door for Suppliers to Close the Door to Discounting Under Federal Law: How Will the State Respond?” MSBA Franchise & Distribution Committee (November, 2008)

"Settlements and Releases in Franchise Disputes: How to Make Sure its Over When its Over," American Bar Association, Thirtieth Annual Forum on Franchising (Scottsdale, AZ, October 2007)

"Public Policy Versus Choice of Law: Is the Best the Enemy of the Good?", ABA Franchise Law Journal, Vol. 26, No.4, Spring 2007

“International Franchise Expansion: Trademark and Trade Secret Law,” Forty-Sixth Annual International Franchise Association Convention (February 2006)

“Hot Topics on Transfer and Assignment,” American Bar Association, Twenty-Eighth Annual Forum on Franchising (New Orleans, LA, October 2005)

“Representing the Multi-Concept Franchise,” International Franchise Association Legal Symposium (May 2005)

Covenants Against Competition in Franchise Agreements,

(2d Ed. 2003), Maryland writer and editor for states in the Fourth Circuit.

Author and Lecturer, Program on Evidence, Lorman Educational Services (November 2003)

“Problems of Dual Distribution” (Antitrust Issues), American Bar Association, Twenty-Fifth Annual Forum On Franchising (Scottsdale, AZ, October 2002)

“Tying Untied: Revolution or Just a ‘Kodak Moment?’” ABA Franchise Law Journal, Vol. 21, No.1, Summer 2001

**ALLAN P. HILLMAN**

“Standards Enforcement,” American Bar Association, Twenty-Second Annual Forum on Franchising (Rancho Mirage, CA, October 1999)

“Essence of Dispute Resolution for Business Lawyers,” American Bar Association, Twenty-First Annual Forum On Franchising (Philadelphia, PA, October 1998)

Author and Lecturer on Franchise, Antitrust, Trademark, Copyright, Trade Secrets, and Covenants Not to Compete, Maryland Institute for the Continuing Professional Education of Lawyers (1990, 1994, 1995, 1996, 1998, 2001)

Author and Lecturer on Unfair Competition, Trade Secrets, Covenants Not to Compete, and Fiduciary Duty, Maryland Judicial Conference (1991)

Author and Lecturer on Antitrust Law 1984-93 (Outstanding Teacher Award), Greater Baltimore Board of Realtors

Author and Lecturer on International Antitrust, Trade Secrets, Anti-Boycott Laws and Import-Export Regulations, World Trade Center Institute (1991-1992)